

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL APPEAL (DB) No.966 of 2017**

Arising Out of PS. Case No.-77 Year-2011 Thana- MAGADH MEDICAL COLLEGE
District- Gaya

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1. Ravi Manjhi Son of Chalitar Manjhi
 2. Bigu Manjhi Son of Chalitar Manjhi
 3. Kusur Devi Wife of Chalitar Manjhi
 4. Chalitar Manjhi Son of Late Dahu Manjhi

Appellants No. 1 to 4 are Resident of Village-Khiriyawan, Police Station-
Magadh Medical, District-Gaya

... .. Appellant/s

Versus

The State of Bihar

... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Shailesh Kumar, Adv.

For the Respondent/s : Mr. Sri Ajay Mishra, APP

CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR

and

HONOURABLE MR. JUSTICE NANI TAGIA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR)

Date : 10-01-2024

We have heard Mr. Chandra Shekhar Anand,
the learned Advocate for the appellants and Mr. Ajay
Mishra, the learned APP for the State.

2. The four appellants have been convicted



under Sections 302, 341 and 34 of the Indian Penal Code, *vide* judgment dated 25.04.2017 passed by the learned Additional Sessions Judge-VII, Gaya in Sessions Trial No. 77 of 2014, 178/2013 (S.J.) arising out of Magadh Medical P.S. Case No. 71 of 2011. By order dated 28.04.2017, all of them have been sentenced to undergo R.I. for life, to pay a fine of Rs. 20,000/- each and in default of payment of fine, to further suffer R.I. for two years for the offence under Section 302 IPC. For the under Section 341 of the IPC, the Trial Court has awarded S.I. for one month to all the appellants.

3. The sentences have been ordered to run concurrently.

4. The husband of Deo Rani Devi (P.W. 8) was assaulted to death by the appellants. The occurrence as alleged by P.W. 8 in her fardbeyan/statement, had taken place at around 07.30. to 8:00 PM at her house on 04.08.2011. Shortly before the fight started, Deo Rani Devi (P.W. 8) was fighting with her co-sister, namely,



Kari Devi (P.W. 7). Both of them were pacified by the deceased and the husband of Kari Devi viz. Kishore Manjhi (P.W. 6). Suddenly, the four appellants, who are close agnates are alleged to have arrived at the house of P.W. 8 and all of them started assaulting the deceased (husband of P.W. 8). There was no immediate cause of dispute, but then as the allegation goes, all the appellants came from the neighbouring house and started assaulting the deceased. When Kishore Manjhi (P.W. 6) wanted to intercede, he too was assaulted. Appellant/Chalitar Manjhi is said to have hit the deceased by means of a *lathi*, whereas appellant/Bigu Manjhi is said to have used brick-bats to further injure him. The occurrence was witnessed by Kari Devi (P.W. 7), Jhubli Devi (P.W. 1, who has been declared hostile) and many persons of the village. After the assault, all the four appellants ran away. The deceased was then taken to hospital but was brought back home on 05.08.2011. Later, in the night of 05.08.2011, the deceased died.

5. The police could not be informed earlier about



the said occurrence.

6. On the basis of the aforementioned *fardbeyan* statement, a case vide Magadh Medical P.S. Case No. 71 of 2011, dated 06.08.2011, was registered for investigation for the offences under Sections 341, 323, 307, 447, 504, 302 and 34 of the IPC.

7. The police after investigation submitted charge-sheet against the appellants, whereupon cognizance was taken and the case was committed to the Court of Sessions for Trial.

8. The Trial Court, after having examined nine witnesses on behalf of the prosecution and none on behalf of the defence, convicted the appellants as aforesaid.

9. The post-mortem examination of the deceased was done by Dr. Parmanand Sinha (P.W. 5), on 06.08.2011. Three abrasions, two of which were on the head and one was on the back of the chest and one contusion was found by the Doctor. On dissection of skull,



a small hematoma in the under surface of parieto-occipital region of the skull was found. There was swelling on the left side of the forehead above the left eyebrow. There was a crack-fracture of the eyebrow bone. Blood clots were also found in the cranial cavity. The death was opined to be because of shock and hemorrhage due to assault by hard and blunt substance. The time fixed for death was 24 hours prior to the post-mortem examination.

10. The afore-noted witness, on being specifically questioned, stated that he could not decipher whether the deceased was given any medical treatment before his death. It is not even required to be stated in the post-mortem examination. The abrasion and contusion, according to the doctor, could be simple in nature as those are normally superficial injuries. These could be caused by a fall or under other circumstances also and it is not always necessary that such contusion and abrasion would be the result of specific assault by



hard and blunt substance.

11. Now, in this background, the prosecution case has been tested.

12. According to Deo Rani Devi (P.W. 8), who had witnessed the occurrence, the deceased had died in the night of Friday, which would fall on 05.08.2011. The deceased was taken to hospital, according to P.W. 8, in the night of 04.08.2011 only. However, there is no evidence of the deceased, while still alive, having been admitted in the hospital. If the *fardbeyan*/statement is to be believed, the deceased had not died till the time he was brought back home.

13. Did the members of the family of the deceased leave the hospital against medical advice or were advised to go back home, remains unknown. If the deceased was unconscious all through and only regained consciousness for a while as claimed by Kishore Manjhi (P.W. 6), who is the brother of the deceased, the hospital administration would not have allowed the deceased to be



taken back home. Even otherwise, if the deceased had died in the hospital, the dead body would immediately have been sent to the morgue for post-mortem examination.

14. In the present case, the dead body was found near the house of the deceased. We say so for the reason that the inquest report was prepared on 06.08.2011 at 12:30 PM in which the dead body is stated to be lying near the house of the deceased.

15. This signifies that the deceased was never taken to any hospital. Then, even the timing of death does not get confirmed if it is juxtaposed to the timing suggested by the prosecution. The fight had taken place in the evening of 04.08.2011.

16. The entire story gets submerged in a morass of false evidence.

17. The defence then would be entitled to argue that the projection of events is absolutely untrustworthy.



18. The other aspect of the matter is that without any reason whatsoever, the appellants are alleged to have come over to the house of the deceased and started assaulting him. There was no existing and live dispute between the parties. No event had taken place which would have irked the appellants for them to come to the house of the deceased and assault him. And if the witnesses are to be believed, the deceased was the main target. What had he done?

19. We get no answer from the deposition of the witnesses. In fact, the fight was between the two co-sisters staying in the same courtyard. The family of the appellants had been partitioned. The father of the deceased viz. Shambhu Manjhi (P.W. 4) though claims to have seen the occurrence but the manner in which he has deposed discloses that he had arrived at the place of occurrence only after the deceased had fallen down on the ground unconscious. He has given the family tree which indicates that the appellants are the own brothers of P.W. 4. The property had earlier been partitioned.



Even at the cost of repetition, we iterate that there was no occasion for this fight to ensue in the late hours on 04.08.2011.

20. This makes us think that perhaps the deceased and his brother/Kishore Manjhi had fought amongst themselves because of their wives having indulged in a fight.

21. Did the appellants get disturbed because of the fight between the two co-sisters for them to be enraged. Things, therefore, have remained under complete wraps.

22. Three of the witnesses, two out of whom are alleged to have seen the assault *viz.* Jhubli Devi and Naresh Manjhi (P.Ws. 1 and 2 respectively) have not supported the prosecution case. Naresh Manjhi/P.W.2 has stated that he had only learnt from others that the deceased had been killed. Jhubli Devi (P.W. 1) had no idea about the occurrence. Her attention was drawn to her earlier statements made before the



police but she denied to have made that statement.

23. All this could not be cross-checked because of the non-examination of the I.O. for no explicable reason.

24. The FIR has been sought to be proved by a person viz. Birendra Singh (P.W. 9), who somehow or the other identified the handwriting of the Police Officer, who had recorded the *fardbeyan* and had investigated the case. He too has said that the Investigator had not put his signature in his presence.

25. All this, therefore, creates a big dent in the prosecution case. Either the statement of P.W. 8 has to be treated as ravings of a widow bemoaning the death of her husband or that she has made a wrong statement, perhaps in an endeavour to cover up the actual cause of the death of the deceased. There could be a possibility of the deceased having received an injury because of fall.

26. If the deposition of P.W. 8 is analyzed a bit deeper, it would appear that she has tried to



exaggerate the prosecution version. The deceased according to her, was assaulted black and blue. If this were true, the deceased would not have received only three abrasions, two of which were on head, which were though superficial but had a forceful impact and resulted in an internal hematoma. The other contusion was on the elbow joint.

27. No doubt, the deceased had died because of such injuries received by him, but in which transaction, remains unknown or at least the defence would be permitted to argue on the demurer.

28. We, therefore, find ourselves completely unable to agree with the findings of the Trial Court that the appellants have killed the deceased. Even otherwise, except for appellants/ Chalitar Manjhi and Bigu Manjhi, there is no allegation against the other two appellants.

29. The allegation against the afore-noted two appellants *viz.* Chalitar Manjhi and Bigu Manjhi could not be established beyond all reasonable doubts.



30. We have no option but to give benefit of doubt to the appellants.

31. The judgment of conviction and order of sentence awarded to the appellants, is thus set aside.

32. The appeal is allowed and the appellants are acquitted of the charges.

33. Appellant/Kusur Devi is on bail. She is discharged of her liabilities under the bail bonds.

34. The appellants viz. Ravi Manjhi, Bigu Manjhi and Chalitar Manjhi are in custody. They are directed to be released forthwith from jail, if not required or detained in any other case.

35. Let a copy of this judgment be dispatched to the Superintendent of the concerned Jail forthwith for compliance and record.

36. The records of this case be returned to the Trial Court forthwith.

37. Interlocutory application/s, if any, also



stand disposed off accordingly.

(Ashutosh Kumar, J)

(Nani Tagia, J)

manoj/SunilKr.

AFR/NAFR	NAFR
CAV DATE	NA
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